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Hearing Date and Time:
December 16, 2020 @ 10:00 a.m.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11
: Case No.: 19-13223 (SMB)
WANSDOWN PROPERTIES CORPORATION :
N.V., :
: Debtor. :
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**MOTION OF THE CITY OF NEW YORK DEPARTMENT OF FINANCE
PURSUANT TO FED. R. CIV. P. 60(b)(4) TO VACATE ORDER RECLASSIFYING
CLAIM NO. 10 AS A GENERAL UNSECURED CLAIM**

The City of New York Department of Finance (“DOF”), by its attorney, JAMES E. JOHNSON, Corporation Counsel of the City of New York, moves this Court for an order, pursuant to Federal Rules of Civil Procedure 60(b)(4), made applicable herein by Federal Rules of Bankruptcy Procedure 9024, for an order vacating the Order of this court entered November 5, 2020, reclassifying the priority claim filed by DOF as a general unsecured claim.

Background

1. On October 8, 2019, Wansdown Properties Corporation NV (the “Debtor”) filed a petition for relief pursuant to chapter 11 of title 11 of the United States Code. An order was entered by this Court establishing a bar date of December 31, 2019 for creditors to file proofs of claim against the Debtor, and April 6, 2020 as the deadline for governmental units to file proofs of claim against the Debtor.

2. On February 25, 2020, DOF filed a timely proof of claim for outstanding General Corporation Taxes for the tax periods December 1, 2012 through October 8, 2019 in the aggregate amount of \$249,909.81 (the “NYC Tax Claim”). The NYC Tax Claim is designated as Claim No. 10 on the Debtor’s claims register. A copy of the NYC Tax Claim is annexed hereto as Exhibit “A”.

3. On October 2, 2020, Debtor filed an objection to the NYC Tax Claim (the “Objection”), seeking an order reclassifying the entire claim as a general unsecured claim. The Objection was improperly served on DOF as it was sent by first class mail to an incorrect address: 345 Adams Street, Fl 3, Brooklyn, NY 11201-3719. DOF’s proper service address, as indicated on the face of the NYC Tax Claim, is: 375 Pearl Street, New York, NY 10038. DOF did not receive notice of the hearing on the Objection until November 16, 2020, and was denied an opportunity to respond to the Objection or appear at the hearing on same.

4. On November 5, 2020, the Court sustained Debtor’s Objection to the priority of the NYC Claim and entered an order (the “November 5th Order”), upon default, which allowed the NYC Tax Claim as a general unsecured claim in the amount of \$249,909.81. The Court retained jurisdiction with respect to all matters related to or arising from the Objection or the implementation of said order. [ECF Doc. No. 175].

The November 5th Order Should Be Vacated

5. Federal Rules of Civil Procedure Rule 60(b)(4) states, in relevant part, that “[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding,” where, “the judgment is void.” Fed. R. Civ. P. 60(b)(4). Here, the November 5th Order is void because service was improper as a matter of law. Debtor failed to serve the Objection on DOF in accordance with the clear directive of Federal Rules of

Bankruptcy Procedure 3007(a)(2)(A), which provides that “[t]he objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated.” Fed. R. Bankr. P. 3007(a)(2)(A). When a creditor designates an address in its proof of claim to which notices should be sent, that address satisfies due process and must be used by the Debtor for mailing of notices and motions. See, Teitelbaum v. Equitable Handbag Co. (In re Outlet Dep't Stores, Inc.), 49 B.R. 536, 540 (Bankr. S.D.N.Y. 1985) (holding when a party effectuates service at an address listed in a proof of claim, due process is achieved); In re Village Craftsman, Inc., 160 B.R. 740 (Bankr. D.N.J. 1993). Debtor's Certificate of Service shows that service was made in contravention of Rule 3007(a)(2)(A) and, therefore, the November 5th Order should be vacated for lack of jurisdiction. [ECF Doc. No. 166].

6. As a substantive matter, the NYC Tax Claim (apart from the portion of the claim which asserts penalties) is entitled to priority. Debtor's Objection fails to acknowledge the critical fact that Debtor failed to file its NYC Business Income Tax Returns after the tax period ending 11/30/2013, despite continuing to operate, manage, and possess its real property and business for the tax periods November 11, 2014 through October 8, 2019. As a non-filer, Debtor's taxes due to the City are not limited to a three-year lookback pursuant to 11 U.S.C. § 507(a)(8)(A). The NYC Tax Claim should receive priority treatment for General Corporation Taxes and interest thereon for the period December 1, 2012 through and including October 8, 2019 in the amount of \$213,120.02.

7. Accordingly, DOF respectfully requests that the Court vacate the November 5th Order stripping the NYC Tax Claim of its priority status. Should the Debtor still contest such

claim, it should be directed to properly file and serve a new objection to allow DOF the opportunity to defend its claim.

WHEREFORE, the City of New York Department of Finance respectfully requests that the Court enter an order, pursuant to Federal Rules of Civil Procedure 60(b)(4), granting DOF's motion in its entirety, together with such other and further relief as the Court deems proper.

Dated: New York, New York
 November 20, 2020

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By: /s/ Samantha J. Chu
 Samantha J. Chu

CERTIFICATE OF SERVICE

I, Samantha J. Chu, an attorney admitted to practice before the courts of the State of New York, do hereby certify that on November 20, 2020, I served a true copy the Motion of The City of New York Department of Finance Pursuant To Fed. R. Civ. P. 60(b)(4) To Vacate Order Reclassifying Claim No. 10 As A General Unsecured Claim on November 20, 2020 by electronic service as follows:

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Dated: New York, New York
November 20, 2020

/s/ Samantha J. Chu
SAMANTHA J. CHU